

SUPREME COURT ALLOWS NEIGHBOR'S INTERVENTION IN ZONING APPEAL; AFFIRMS LOCAL ZONING LANGUAGE

The Vermont Supreme Court has upheld the right of a municipality to exercise *some* discretion in establishing its zoning bylaws. *In re Appeals of Shantee Point, Inc.*, No. 2000-474 (Vt. October 4, 2002).

Shantee Point focuses on a number of legal issues, two of which are of great importance to Vermont municipalities and will be discussed herein.

The Facts

This case focuses on a road located on the peninsula of Shantee Point, which juts out into Lake Champlain in the town of St. Albans. The land at issue in this case was once owned by a single landowner, who subsequently conveyed it to his daughters by will, who then sold their interests in the land to the litigants in this case, Shantee Point Estates, Inc. (SPE), and Stephen Dana (Dana). Throughout this time, the land at issue contained various camps and permanent homes, all of which leased their interests on the property from the landowners. SPE and Dana owned the property as tenants in common, a form of legal ownership where neither party has full control over the property.

The parties went to superior court in 1990 for a partition action, where the court divided the property into three parcels, with SPE's middle piece sandwiched by Dana's outer parcels. Because of the way in which the land was divided, anybody traveling to these camps would have to use the access road to get to those properties. The litigation that became this case began when SPE decided to relocate the access road on its lots from the shoreline to the rear of its parcel. Dana decided not to do a similar relocation of the road on his properties, thus, "after SPE's road relocation, a vehicle coming onto the peninsula from the north would first proceed along the lake on the old road in front of Dana's ten lots, then proceed to the east on the 'connector' portion and then proceed south on the new road behind SPE's lots, until joining the old road again south of these lots." *Id* at 2.

The Legal Issues

Because the issues involved were diverse, they were sent to superior court and Environmental Court for decisions based on their respective jurisdictions. On appeal to the Vermont Supreme Court, all of the issues were consolidated. The relevant municipal issues here include the Court's interpretation of the St. Albans subdivision regulations, as well as the application of the term "interested person," as defined by 24 V.S.A. § 4464 (b) (3).

When Dana first went to superior court to determine whether the road was public or private, he also sought a determination that SPE unlawfully interfered with his easement over the road by relocating part of it without his consent. He also claimed that SPE unlawfully built a portion of the road on his property, and SPE filed a third-party complaint against the Town to resolve whether the road was public or private.

While all this was happening, the St. Albans zoning administrator informed SPE that a site plan permit was required for the road reconstruction (apparently, the administrator had previously informed SPE they did *not* need a site plan review or subdivision permit), as well as a subdivision permit. Soon thereafter, the zoning

administrator issued notices of violation, alleging a failure to obtain the necessary municipal permits. The zoning board of adjustment upheld both of these decisions, which were then appealed to the Environmental Court.

Intervenor Status

Before the Environmental Court, Dana attempted to intervene based on the Vermont Rules of Civil Procedure, which allow intervention “when a statute confers an unconditional right to intervene.” V.R.C.P. 24 (a) (1). Vermont municipalities are well aware of one such statute, 24 V.S.A. § 4464 (b) (3), which defines “interested person” to include “a person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under this chapter, who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality.” The Environmental Court denied Dana the right to intervene, apparently believing he was not an “interested person” based on 24 V.S.A. § 4464 (b) (3), interpreting that statute to allow persons to intervene only if they are *contesting an adverse decision* of the ZBA, but not when *supporting* a decision of the ZBA. The Supreme Court stated that this interpretation of the statute was too narrow, allowing intervention as of right to “persons described in 24 V.S.A. § 4464 (b) (3) who make a timely motion to intervene.” *Id* at 6. VLCT agrees strongly with this interpretation of the statute, as adjoining landowners deserve to be notified of appeals taken with regard to their neighboring land, and moreover, deserve the right to participate in such litigation.

Municipal Discretion in Establishing Subdivision Regulations

Last month, we wrote about the Supreme Court’s recent decision in *In re Richards* (VLCT News, October 2002), where the Court stressed the importance of municipal conformity with the state zoning enabling law, 24 V.S.A. Ch. 117. VLCT believes the Court’s holding in *Richards* to require a town to use the state law on existing small lots *verbatim*. The *Shantee Point* case, however, shows us that municipalities walk a fine line when using the state’s enabling legislation to establish their zoning regulations, as towns may be able to define items not defined by state law, or in some cases, establish stricter standards than those propagated by state law.

The relevant portion of St. Albans’ subdivision regulations states that land development for residential or recreational purposes is subject to the subdivision regulations if it involves “construction or extension of a road or driveway to serve more than two lots.” St. Albans Zoning Ordinance § 200 (b). SPE claimed that the subdivision regulations were invalid, arguing they didn’t precisely follow the state law on subdivision regulations, and the state law only allows subdivision regulations if there is a division of land into two or more parcels. The Court stated, “although [Ch. 117] contains no explicit definition of ‘subdivision,’ we held in *Lowe* that, consistent with the definition of land development, ‘subdivision’ means the division of a parcel into two or more parcels.” *Id* at 8 (citation omitted).

The Court gave three reasons for approving the St. Albans subdivision regulations:

1. Because Ch. 117 does not define “subdivision,” towns should be allowed to define it for themselves; also, Ch. 117 does not explicitly limit the circumstances in which a municipality can require a subdivision permit.
2. The issue of the siting of a road is a “traditional central concern of subdivision regulation.” *Id* at 9.
3. The St. Albans subdivision regulations allow subdivision jurisdiction only if the newly constructed or extended road serves more than two lots. Therefore, there must have been *some* subdivision of land either at the time of the road construction, or in the past. The Court affirmed the right of municipalities to regulate subdivisions, stating “it would not be in the public interest to allow the landowner to make significant changes in a preexisting subdivision with no regulatory review.” *Id* at 10. Additionally, the Court acknowledged the right of municipalities to establish local definitions of subdivisions: “While the local discretion is not unlimited, we conclude it is broad enough to validate the ordinance provision involved here.” *Id* at 11.

What Does This Mean for My Town?

The municipal relevance here cannot be understated: Town planners will be pleased to know that in circumstances where the State has not established a definition, municipalities can write their own definition for something like “subdivision,” to establish a truly “local” meaning to the word. However, it is important to exercise caution, because municipal definitions cannot be at odds with a state definition, or establish a standard that would reduce the effectiveness of a state law. In this case, the Supreme Court was careful to note that the real constraint on a town comes from the state definition of “land development,” which has been defined very explicitly and is something a municipality cannot deviate from. The road development in this case came squarely within the definition of land development, and therefore, was something the town could regulate based on the State’s definition, as effectuated by the Town’s zoning ordinance and subdivision bylaws.

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